

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**SHANE MACK LOWRY,**

Petitioner,

v.

**CIVIL ACTION NO. 1:04-CV-60  
(BAILEY)**

**B.A. BLEDSOE, ET AL.,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On July 26, 2007, the above-styled matter came before the Court for consideration pursuant to Petitioner's objections to the Report and Recommendation of United States Magistrate Judge John S. Kaull. Magistrate Judge Kaull filed his R & R on July 16, 2007 [Doc. No. 63]. In that filing, the magistrate judge recommended that this Court grant the Motion to Dismiss [Doc. No. 53], and that the petitioner's Complaint be denied and dismissed with prejudice. It was further recommended that the petitioner's Motion for Immediate Injunction [Doc. No. 35] be denied.

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***,

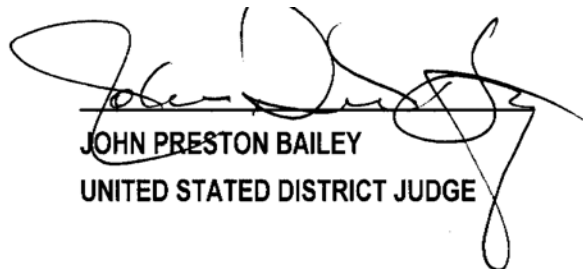
727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due July 26, 2007, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The petitioner timely filed his Objections [Doc. No. 65] on July 26, 2007. Accordingly, this Court will conduct a *de novo* review only as to the portions of the report and recommendation to which the petitioner objected. The remaining portions of the report and recommendation to which the petitioner did not object will be reviewed for clear error.

Upon careful review of the report and recommendation [Doc. 63] and the petitioner's objections thereto [Doc. 65], it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 63] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Accordingly, the Court hereby **DENIES** the petitioner's motion under 28 U.S.C. § 1331 and/or Title 42 U.S.C. § 1983 [Doc. No. 1], and **DISMISSES it with prejudice**. As such, the Court **DENIES** the petitioner's Motion for Request for Immediate Injunction [Doc. 35]. Additionally, the Court **GRANTS** the respondent's Motion to Dismiss [Doc. 53].

It is so **ORDERED**.

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

**DATED:** September 24, 2007.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE